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Attorneys for Plaintiffs
HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC LP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. C08 00133 RMW (RS)

**DECLARATION OF KATHARINE L.
ALTEMUS IN SUPPORT OF PLAINTIFFS'
MOTION TO COMPEL RESPONSES TO
CERTAIN INTERROGATORIES**

Date: No hearing requested
Judge: Hon. Richard Seeborg

I, Katharine L. Altemus, declare as follows:

1. I am an associate in the law firm Howrey LLP and a member of the Bar of this court. I serve as one of the outside counsel for Hologic, Inc., Cytyc Corporation and Hologic LP (collectively "Plaintiffs" or "Hologic"). The following declaration is based on my personal knowledge, and if called upon to testify, I could and would competently testify as to the matters set forth herein.

Exhibit A

1 Henry C. Su (SBN 211202; suh@howrey.com)
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9 Attorneys for Plaintiff
10 HOLOGIC, INC., HOLOGIC CORPORATION and HOLOGIC
LP

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 HOLOGIC, INC., CYTYC CORPORATION,
15 and HOLOGIC LP,

16 Plaintiffs,

17 vs.

18 SENORX, INC.,

19 Defendant.

20
21 AND RELATED COUNTERCLAIMS
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23
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Case No. C08 00133 RMW

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES (NOS. 1-4)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs Hologic Inc., Cytoc Corporation, and Hologic L.P. (collectively, "Hologic") request that Defendant SenoRx, Inc. ("SenoRx") answer the following interrogatories separately, fully, and under oath, by such officers or agents as have knowledge of the facts, by serving written responses at the offices of Howrey LLP, 1950 University Avenue, 4th Floor, East Palo Alto, California 94303, within ten (10) days of service hereof, as mutually agreed upon by the parties.

The following definitions and instructions apply.

DEFINITIONS

1. "SenoRx" or "you" means SenoRx, Inc., and any parent, subsidiary, partner (including, but not limited to, general and limited partners), member and/or affiliated entities, past or present, of SenoRx, and any person or entity, past or present, acting on behalf of SenoRx, including, but not limited to, each of its present and former officers, executives, general partners, limited partners, directors, employees, attorneys, agents and/or representatives.

2. The "'204 patent" means U.S. Patent No. 6,413,204.

3. The "'142 patent" means U.S. Patent No. 6,482,142.

4. The "'813 patent" means U.S. Patent No. 5,913,813.

5. "Patents-in-suit" means the '813, the '204 patent, and the '142 patent.

6. The term "document(s)" shall have the broadest meaning ascribed to it by Rules 26 and 34(a) of the Federal Rules of Civil Procedure and refers inclusively to any writing of any kind, including originals and all non-identical copies (whether different from the original by reason of any notation made on such copies or otherwise). The term "document(s)" shall include, without limitation, the following items, whether printed or reproduced by any process, or written or produced by hand or stored in computer memory, magnetic or hard disk or other data storage medium, and whether or not claimed to be privileged, confidential or otherwise excludable from discovery, namely, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, laboratory and research reports and

1 notebooks, recorded experiments, charts, plans, drawings, diagrams, schematic diagrams, HDL,
2 verilog, or other code, illustrations, product descriptions, product analyses, requests for
3 proposals, documents relating to proposed or actual product improvements or changes, users
4 manuals or guides, installation guides or manuals, technical descriptions or specifications,
5 product repair manuals or guides, photographs, video images, software flow charts or
6 descriptions or specifications, product functional descriptions or specifications, minutes or
7 records of meetings, summaries of interviews, reports, or investigations, opinions or reports of
8 consultants, reports of patent searches, patent appraisals, opinions of counsel, agreements,
9 reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade
10 letters, press releases, drafts of documents, and all other material fixed in a tangible medium of
11 whatever kind known to you or in your possession, custody, or control.

12 7. The term “communication(s)” includes any transfer of information, ideas,
13 opinions, or thoughts by any means, written, oral, or otherwise, at any time or place under any
14 circumstances. The definition is not limited to transfers between persons but also includes other
15 transfers, such as records and memoranda to file; any written letter, memorandum, or other
16 document which was sent by one or more individuals to another or others; any telephone call
17 between one or more individual and another or others, whether such call was by chance or
18 prearranged, formal or informal; and any conversation or meeting between one or more
19 individuals and another, whether such contact was by chance or prearranged, formal or informal.

20 8. “Prior art” means all publications (including, but not limited to, notes and slides
21 from oral presentations, meeting abstracts, posters), patents, physical specimens, uses, sales,
22 offers for sale or other activities relating to the subject matter of any Patent-In-Suit and existing
23 or occurring at a date such as to be potentially relevant under any subsection of 35 U.S.C. §§ 102
24 or 103.

25 9. The term “Contura Multi-Lumen Balloon” means any multi-lumen radiation
26 balloon applicator for accelerated partial breast irradiation designed, developed, produced,
27 manufactured, assembled, constructed, made, promoted, advertised, marketed, or sold by or for
28

1 SenoRx, regardless of the trade name under which such products are or will be sold and
 2 regardless of whether such applicators are prototypes, beta releases, production releases, or other
 3 versions, commercial or non-commercial. This definition includes, but is not limited to, any
 4 device variously identified by SenoRx as the

- 5 • “Multi-Lumen Balloon Source Applicator for Brachytherapy”;
- 6 • “Multi-Lumen Radiation Balloon Applicator for Brachytherapy”;
- 7 • “SenoRad Multi-Lumen Balloon Source Applicator for Brachytherapy”;
- 8 • “Contura™ Multi-Lumen Balloon”;
- 9 • “Contura MLB”; and/or
- 10 • “Contura”.

11 10. The term “identify” when used in these interrogatories in connection with a
 12 request to identify a natural person, means to set forth his or her: (a) full name; (b) title or
 13 position; (c) present or last known business or home address; and (d) present or last known
 14 employer. For any person so identified, if any of the above information is different from what it
 15 was at the time with which the particular interrogatory is concerned, supply such different
 16 information.

17 11. The term “identify” when used in these interrogatories in connection with a
 18 request to identify a document, means to state: (a) the date; (b) the author and signatories; (c) the
 19 type, subject matter and substance of the document; (d) the addressees and all other persons who
 20 received copies; (e) the custodian; (f) the present location; and (g) the bates number(s) of the
 21 document as produced to Hologic.

22 12. The terms “identify,” and “identification,” when used in these interrogatories in
 23 connection with a communication, requires an identification of (a) all persons participating in or
 24 present for the communication; (b) the subject matter of the communication; (c) the date, place
 25 and duration of the communication; (d) the means of communication (*e.g.*, letter, telephone
 26 conference, in-person meeting); and (e) all documents exchanged during or as part of the
 27 communication or memorializing the communication.

13. “Describe” means to provide a detailed narrative account of the subject matter and to identify all documents and witnesses relating to the subject matter.

14. “Including” means including but not limited to.

15. “Any” and “each” shall be construed to include and encompass “all.”

16. “And” and “or” shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of such scope.

17. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. In answering these interrogatories, SenoRx is required to furnish all information that is available to SenoRx, not merely such information as the persons preparing the responses know of their own personal knowledge, including information in the possession of SenoRx's attorneys, employees, or other persons directly or indirectly employed by, or connected with SenoRx or its attorneys or consultants, or anyone acting on SenoRx's behalf or otherwise subject to SenoRx's control. In answering these interrogatories, SenoRx is required to make a diligent search of its records and of other documents and materials in its possession or the possession of its employees, attorneys, consultants, or other representatives.

2. In the event that any information called for by these interrogatories is withheld based on a claim of attorney/client privilege, work product immunity, or any other privilege or protection from discovery, SenoRx is required to provide sufficient details, including the nature of the information, its source and subject matter, and to whom that information was disseminated, such as would enable the claim of privilege or immunity to be adjudicated.

3. If SenoRx cannot answer any interrogatory fully after a diligent attempt to obtain the requested information, SenoRx is required to answer the interrogatory to the extent possible, specify the portion of the interrogatory that SenoRx is unable to answer, and provide whatever information SenoRx has regarding the unanswered portion.

1 4. If SenoRx, pursuant to Federal Rule of Civil Procedure 33(d), opts to produce
2 business records in lieu of a written response to an interrogatory, SenoRx must indicate, for each
3 business record provided, the interrogatory to which it is responsive.

4 **INTERROGATORIES**

5 **INTERROGATORY NO. 1:**

6 Describe in detail any harm that SenoRx contends it will suffer should a preliminary
7 injunction prohibiting the manufacture, use, sale, or offer for sale of the Contura Multi-Lumen
8 Balloon issue, and identify any documents upon which SenoRx will rely as evidence of that
9 alleged harm.

10 **INTERROGATORY NO. 2:**

11 If SenoRx contends that a preliminary injunction prohibiting the manufacture, use, sale,
12 or offer for sale of the Contura Multi-Lumen Balloon should not issue, explain the basis for that
13 contention, including, but not limited to,

14 (a) the basis for any contention that claim 1 of the '142 patent or claim 36 of the '204 is
15 invalid or unenforceable (including, but not limited to, an element-by-element comparison of any
16 allegedly invalidating prior art to each asserted claim);

17 (b) the basis for any contention that SenoRx does not infringe claim 1 of the '142 patent
18 or claim 36 of the '204 (including, but not limited to, an element-by-element comparison of how
19 the Contura differs from each asserted claim);

20 (c) an identification of all documents upon which SenoRx intends to rely to support these
21 contentions; and

22 (d) an identification of all persons with knowledge concerning these contentions.

23 **INTERROGATORY NO. 3:**

24 Describe in detail the differences between the Contura Multi-Lumen Balloon and the
25 MammoSite devices that SenoRx believes are or would be material to medical professionals
26 and/or patients, including, but not limited to, any information provided to medical professionals
27 (including current or former MammoSite users) and all bases for SenoRx's assertions that
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(a) “[c]ertain patients who are presently candidates for balloon therapy are currently excluded because of the location of the lesion relative to their breast size. Our multi-lumen approach offers a solution to this problem.” See SenoRx May 23, 2007 press release (posted at http://www.senorx.com/siteadmin/files/SenoRAnnounces510_k_ClearanceforMulti-LumenRadiationBalloon.pdf). As part of your answer to this subsection, explain in detail (i) how the Contura MLB offers a solution to patients who are “currently excluded because of the location of the lesion relative to their breast size,” (ii) whether “the solution” discussed above is to use the Contura MLB with a balloon-to-skin distance of less than 5mm; and

(b) “[so]me patients who are presently candidates for balloon therapy are currently excluded because of the location of the lesion and their breast size. Contura’s advanced multi-lumen design may address this issue for certain patients.” See SenoRx January 17, 2008 press release (posted at <http://www.senorx.com/siteadmin/files/SenoRxLaunchesContura.pdf>). As part of your answer to this subsection, explain in detail (i) how the Contura MLB may address “this issue for certain patients”; and (ii) whether the method by which the Contura MLB “may address this issue for certain patients,” as discussed above, is to use the Contura MLB with a balloon-to-skin distance of less than 5mm.

INTERROGATORY NO. 4:

Provide SenoRx’s construction of the following terms from claim 1 of the ‘142 patent, identify all references from the claims, specification or prosecution history that support that construction, and identify any extrinsic evidence upon which SenoRx intends to rely to support the proposed construction, including, but not limited to, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

- (a) “three-dimensional apparatus volume”;
- (b) “completely within”;
- (c) “disposed completely within the expandable outer surface”;
- (d) “spaced apart”;
- (e) “located so as to be spaced apart from the apparatus volume”;


1 (f) “asymmetrically located and arranged”;

2 (g) “asymmetrically located and arranged within the expandable surface”; and

3 (h) “predetermined asymmetric isodose curves with respect to the apparatus volume”.

4 Dated: March 4, 2008

5 HOWREY LLP

6
7 By 
8 Katharine L. Altemus

9 Attorneys for Plaintiffs Hologic,
10 Inc., Cytac Corporation, and Hologic
11 L.P.
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HOWREY LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 4, 2008, a true and correct copy of:

PLAINTIFFS' FIRST SET OF INTERROGATORIES (NOS. 1-4)

was served on the following counsel of record for SenoRx, Inc. by U.S. Mail:

F.T. Alexandra Mahaney
amahaney@wsgr.com
Natalie J. Morgan
nmorgan@wsgr.com
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Bruce R. Genderson (*pro hac vice application pending*)
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aharber@wc.com
WILLIAMS & CONNOLLY LLP
725 – 12th Street, N.W.
Washington, D.C. 20005

By:



Sonya Schwab

Exhibit B

From: Altemus, Katharine
Sent: Monday, March 03, 2008 4:49 PM
To: 'Maurer, Aaron'
Cc: Cohn, Marc
Subject: RE:

Hi Aaron-

We will be willing to accept one notice for the plaintiffs. I'll get back to you as soon as possible about March 17 or 18 for the Magnuson deposition.

Thanks,
Katharine

From: Maurer, Aaron [mailto:AMaurer@wc.com]
Sent: Monday, March 03, 2008 3:53 PM
To: Altemus, Katharine
Cc: Cohn, Marc
Subject: RE:

Dear Katharine,

I'll take a look at your proposed changes and get back to you.

In the meantime, further to our discussion in San Jose, is Mr. Magnuson available for deposition on 3/17 and/or 3/18?

Also, with respect to the 30(b)(6) notice, should we serve separate notices for each of the Plaintiffs or (as I suspect) would you be willing to accept one notice for each of the three plaintiffs?

Thanks,

Aaron

From: Altemus, Katharine [mailto:AltemusK@howrey.com]
Sent: Monday, March 03, 2008 5:33 PM
To: Maurer, Aaron
Cc: Cohn, Marc
Subject:

Aaron-

I have attached for your review a draft proposed order for Friday's CMC that we plan to submit to the Court. Please let me know if you have any objections to the draft proposed order.

During our discussion Friday, you expressed concern that Hologic would generate a voluminous production in response to your discovery requests. You indicated that you believe SenoRx's discovery requests are tailored to solicit only the information SenoRx needs for the preliminary injunction process. In light of your concerns, Hologic will do its best to minimize its production and to target its production to your requests.

We agreed that neither party would present live testimony at the preliminary injunction hearing. Although we were unable to solidify firm limits on discovery, we did agree to respond to interrogatories and requests for admissions within 10 days of service, and to respond to requests for production within 10 days if possible, or if not, as soon as possible thereafter. You were unable to set an upper limit to the number of interrogatories, RFAs, or RFPs that SenoRx will need to propound before the preliminary injunction proceeding.

You indicated that SenoRx will want to take the deposition of Glenn Magnuson and a 30(b)(6) witness, as well as possibly the inventors and a marketing person. Please note that we have already produced to you the transcripts of all inventor depositions from the *Xoff v. Cytac* litigation. As I mentioned, the inventors are third parties, outside the control of Hologic. Nevertheless, we will try to facilitate additional inventor depositions should you choose to pursue them.

As we discussed, Hologic will also pursue discovery before the preliminary injunction hearing. Although we believe we are entitled to propound discovery commensurate with the number of discovery requests propounded by SenoRx, Hologic will attempt to limit its discovery requests to 10 RFPs and 5 interrogatories. Should we need additional discovery, I trust SenoRx will be able to work with us on that issue. At this time, Hologic intends to depose a SenoRx 30(b)(6) witness, as well as your expert Roy Weinstein. Should you decide at a later date to rely on any additional experts, Hologic will need to depose them.

On a related note, thank you for drafting the proposed agreement so rapidly. We would like to made the following edits to your proposal:

- The fourth paragraph has a typographical error, and should read: "...and any other information **that** he or she relies..." [word with typo highlighted]
- in the paragraph numbered (1), add the highlighted verbiage "or contain any notes (**except as provided in paragraph 2 below**), ..."
- for the paragraph numbered (3), we would prefer to substitute the following language:

3. *Written or oral communications between or among any retained expert, his/her assistants, in-house or outside counsel, and/or consultants for any party to this litigation are not subject to discovery. Written or oral communications of experts, consultants, and/or their assistants with non-attorney employees of the parties are not protected by this agreement, and are subject to discovery.*

Thanks,
Katharine

Katharine Altemus, Ph.D.
HOWREY LLP
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East Palo Alto, CA 94303
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altemusk@howrey.com

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=====

Exhibit C

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5 San Diego, CA 92130
6 Telephone: (858) 350-2300
7 Facsimile: (858) 350-2399
8 Email: amahaney@wsgr.com

9 Bruce R. Genderson (admitted *pro hac vice*)
10 Aaron P. Maurer (admitted *pro hac vice*)
11 Rachel Shanahan Rodman (admitted *pro hac vice*)
12 Adam D. Harber (admitted *pro hac vice*)

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18 Attorneys for Defendant and Counterclaimant
19 SENORX, INC.

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN JOSE DIVISION

23 HOLOGIC, INC., CYTYC CORPORATION and)
24 HOLOGIC L.P.,)

25 Plaintiffs,)

26 v.)

27 SENORX, INC.,)

28 Defendant.)

29 SENORX, INC.,)

30 Counterclaimant,)

31 v.)

32 HOLOGIC, INC., CYTYC CORPORATION and)
33 HOLOGIC L.P.,)

34 Counterdefendants.)

Case No. C-08-0133 RMW

**DEFENDANT AND
COUNTERCLAIMANT SENORX,
INC.'S OBJECTIONS AND
RESPONSES TO PLAINTIFFS'
FIRST SET OF
INTERROGATORIES (NOS. 1-4)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant SenoRx, Inc. ("SenoRx") responds and objects to Plaintiffs Hologic, Inc., Cytoc Corp., and Hologic L.P.'s (collectively, "Hologic" or "Plaintiffs") First Set of Interrogatories (Nos. 1-4).

GENERAL OBJECTIONS

1. SenoRx objects to each definition, instruction, and interrogatory to the extent it seeks information and/or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, doctrine, law, or rule. In the event privileged or confidential information is released, the release, unless otherwise expressly stated to the contrary in writing at the time of production, is inadvertent and shall not constitute a waiver. SenoRx reserves its rights to retrieve and prevent the use of any privileged or protected information inadvertently provided.

2. SenoRx objects to logging on a privilege log any communications between SenoRx and its counsel since the filing of the complaint in the above-captioned case. SenoRx further objects to logging any work product created since the filing of the complaint in the above-captioned case.

3. SenoRx objects to each definition, instruction, and interrogatory to the extent it seeks information or documents containing private, confidential, secret, proprietary, and/or sensitive business information. Absent a specific order of the court, SenoRx will not provide information to the extent SenoRx is under any obligation – whether imposed by a third party, court, tribunal, legislature, or any other body with authority to impose or enforce such an agreement, or by any statute, regulation, or order – not to disclose it.

4. SenoRx objects to each definition, instruction, and interrogatory to the extent it seeks information that is unreasonably cumulative or duplicative, that is publicly available, that is already in the possession, custody, or control of Plaintiffs or Plaintiffs' counsel, that is of no greater burden for Plaintiffs to obtain than SenoRx, or that is obtainable from some other source that is more convenient, less burdensome, or less expensive, and/or to the extent that compliance

1 would be unduly burdensome, expensive, or oppressive. Unless otherwise indicated specifically
2 below, SenoRx will not provide such information.

3 5. SenoRx objects to any definition, instruction, and interrogatory to the extent it
4 seeks to impose obligations different from, or in excess of, those created by the Federal Rules of
5 Civil Procedure; the Civil Local Rules or Patent Local Rules of the United States District Court
6 for the Northern District of California; or any other applicable rule, law, or doctrine.

7 6. SenoRx objects to each definition, instruction, and interrogatory to the extent it
8 purports to require SenoRx to provide information from, or with respect to, individuals or entities
9 other than SenoRx, Inc. SenoRx further objects to Plaintiffs' definition of "SenoRx" and "you"
10 because it purports to impose an obligation on SenoRx to provide information from SenoRx's
11 corporate parents, subsidiaries, affiliates, and other individuals or entities other than SenoRx,
12 Inc., and thus imposes a greater obligation than the Federal Rules of Civil Procedure and the
13 Civil Local Rules and Patent Local Rules of the United States District Court for the Northern
14 District of California.

15 7. SenoRx objects to each definition, instruction, and interrogatory to the extent it
16 purports to seek or require SenoRx to provide information that is not within SenoRx's
17 possession, custody, or control.

18 8. SenoRx objects to each definition, instruction, and interrogatory as overly broad,
19 unduly burdensome, and oppressive to the extent it requires SenoRx to provide information that
20 is neither relevant to the parties' claims and defenses in this action nor reasonably calculated to
21 lead to the discovery of admissible evidence. Where SenoRx has objected to an interrogatory on
22 the grounds, *inter alia*, that the request is overly broad and unduly burdensome, but nonetheless
23 provided a response, the response should be construed to mean that SenoRx's response is based
24 on a reasonable inquiry of those employees whom, and a reasonable search of those files which,
25 it reasonably believes may provide relevant, responsive, and non-duplicative information.

26 9. SenoRx objects to each definition, instruction, and interrogatory to the extent it or
27 the information it seeks is subject to construction by the Court at a later date.

1 10. SenoRx objects to each interrogatory to the extent it prematurely seeks
2 information to be provided by expert witnesses, or otherwise is premature in light of the Patent
3 Local Rules or any Scheduling Order in this case or any other applicable rule, doctrine, or
4 accepted practice.

5 11. SenoRx objects to each interrogatory to the extent it uses language incorporating
6 or calling for an expert opinion, a legal conclusion, or making an erroneous statement of law.
7 SenoRx's responses herein shall be as to matters of fact only, and shall not be construed as
8 stating or implying any conclusions of law concerning the matters referenced in any
9 interrogatory.

10 12. SenoRx objects to each interrogatory that is not confined to a relevant time period
11 as overly broad, vague, unduly burdensome, and seeking information neither relevant to the
12 subject matter of this action nor reasonably calculated to lead to the discovery of admissible
13 evidence.

14 13. SenoRx objects to each interrogatory to the extent that it is compound, includes
15 subparts in such a manner that it is unduly burdensome, confusing, cannot be reasonably
16 answered, and/or attempts to avoid the limitation in the Federal Rules of Civil Procedure of
17 twenty-five (25) interrogatories.

18 14. SenoRx objects to Plaintiffs' definition of "Contura Multi-Lumen Balloon" as
19 overly broad and not relevant to the parties' claims and defenses in this action in that it purports
20 to cover "any multi-lumen balloon application designed, developed, produced, manufactured,
21 assembled, constructed, made, promoted, advertised, marketed, or sold by or for SenoRx,
22 regardless of the trade name under which such products are or will be sold and regardless of
23 whether such applicators are prototypes, beta releases, production releases, or other versions,
24 commercial or non-commercial." SenoRx will respond with respect to the Contura™ MLB
25 device (irrespective of name) that is currently being marketed by SenoRx and that is alleged to
26 infringe the Patents-In-Suit.

27 15. SenoRx objects to Plaintiffs' definition of "Prior Art" as legally incorrect, and
28 overly broad, vague, and unduly burdensome.

1 16. SenoRx's responses herein are based on facts presently known to it and represent
2 a diligent and good faith effort to comply with the requests. Unless otherwise stated, SenoRx
3 will construe the requests only to require it to use reasonable diligence to locate responsive
4 documents or information from its current officers or employees based upon examination of
5 those files in which responsive documents or information about the specific matters at issue
6 ordinarily would be expected to be found.

7 17. SenoRx's discovery and investigation into the matters specified is continuing.
8 Accordingly, SenoRx reserves its right to supplement, alter, or change its objections or responses
9 to Plaintiffs' interrogatories and to produce additional responsive information, if any, in
10 accordance with Fed. R. Civ. P. 26(a)(3)(A)(iii) and (e). Furthermore, SenoRx reserves the right,
11 at trial or during other proceedings in this action, to rely on documents, evidence, and other
12 matters in addition to the documents and/or information produced in response to requests,
13 whether or not such documents, evidence, or other matters are newly discovered or are now in
14 existence but have not been located despite diligent and good faith efforts.

15 18. In furnishing these responses to these interrogatories, SenoRx does not admit or
16 concede the relevancy, materiality, authenticity, or admissibility in evidence of any such
17 interrogatory or response. All objections to the use, at trial or otherwise, of any information
18 provided in response to the interrogatories and to any further production are hereby expressly
19 reserved. In addition, these responses are made solely for purposes of this action.

20 19. The applicable foregoing General Objections are incorporated into each of the
21 specific objections and responses that follow. The stating of a specific objection or response
22 shall not be construed as a waiver of SenoRx's General Objections.

23 **SPECIFIC OBJECTIONS AND RESPONSES**

24 **INTERROGATORY NO. 1:**

25 Describe in detail any harm that SenoRx contends it will suffer should a preliminary
26 injunction prohibiting the manufacture, use, sale, or offer for sale of the Contura Multi-Lumen
27 Balloon issue, and identify any documents upon which SenoRx will rely as evidence of that
28 alleged harm.

RESPONSE TO INTERROGATORY NO. 1:

SenoRx incorporates its General Objections as if fully set forth herein. SenoRx objects to this interrogatory on the grounds that it is premature and conflicts with the parties' stipulated briefing schedule for response to Plaintiffs' Motion for a Preliminary Injunction, as discussed in the February 29, 2008 Case Management Conference and set forth in the parties' proposed case management order filed on March 4, 2008, and attempts to circumvent the parties' agreed schedule. Accordingly, the Interrogatory is overly broad and unduly burdensome. SenoRx also objects that this Interrogatory is compound. SenoRx will set forth the harm it contends it will suffer should a preliminary injunction issue, and the support therefore, as appropriate, in its Opposition to Plaintiffs' Motion.

INTERROGATORY NO. 2:

If SenoRx contends that a preliminary injunction prohibiting the manufacture, use, sale, or offer for sale of the Contura Multi-Lumen Balloon should not issue, explain the basis for that contention, including, but not limited to,

(a) the basis for any contention that claim 1 of the '142 patent or claim 36 of the '204 is invalid or unenforceable (including, but not limited to, an element-by-element comparison of any allegedly invalidating prior art to each asserted claim);

(b) the basis for any contention that SenoRx does not infringe claim 1 of the '142 patent or claim 36 of the '204 (including, but not limited to, an element-by-element comparison of how the Contura differs from each asserted claim);

(c) an identification of all documents upon which SenoRx intends to rely to support these contentions; and

(d) an identification of all persons with knowledge concerning these contentions.

RESPONSE TO INTERROGATORY NO. 2:

SenoRx incorporates its General Objections as if fully set forth herein. SenoRx objects to this interrogatory on the grounds that it is premature and conflicts with the parties' stipulated briefing schedule for response to Plaintiffs' Motion for a Preliminary Injunction, as discussed in the February 29, 2008 Case Management Conference and set forth in the parties' proposed case

management order filed on March 4, 2008, and attempts to circumvent the parties' agreed schedule. SenoRx further objects to this Interrogatory as premature in light of the timetables provided in the Patent Local Rules. SenoRx also objects that this Interrogatory is compound. SenoRx also objects that this Interrogatory is overly broad and unduly burdensome, and seeks information not relevant to the claim or defense of any party, in that it seeks the identification of "all persons" with knowledge concerning these contentions. SenoRx also objects to this Interrogatory on the grounds that it seeks information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. To the extent that SenoRx contends a preliminary injunction should not issue for reasons of invalidity, unenforceability, or non-infringement, SenoRx will set forth those contentions, and the support therefore, as appropriate, in its Opposition to Plaintiffs' Motion.

INTERROGATORY NO. 3:

Describe in detail the differences between the Contura Multi-Lumen Balloon and the MammoSite devices that SenoRx believes are or would be material to medical professionals and/or patients, including, but not limited to, any information provided to medical professionals (including current or former MammoSite users) and all bases for SenoRx's assertions that

(a) "[c]ertain patients who are presently candidates for balloon therapy are currently excluded because of the location of the lesion relative to their breast size. Our multi-lumen approach offers a solution to this problem." See SenoRx May 23, 2007 press release (posted at http://www.senorx.com/siteadmin/files/SenoRAnnounces510_k_ClearanceforMulti-LumenRadiationBalloon.pdf). As part of your answer to this subsection, explain in detail (i) how the Contura MLB offers a solution to patients who are "currently excluded because of the location of the lesion relative to their breast size," (ii) whether "the solution" discussed above is to use the Contura MLB with a balloon-to-skin distance of less than 5mm; and

(b) "[s]ome patients who are presently candidates for balloon therapy are currently excluded because of the location of the lesion and their breast size. Contura's advanced multi-lumen design may address this issue for certain patients." See SenoRx January 17, 2008 press release (posted at <http://www.senorx.com/siteadmin/files/SenoRxLaunchesContura.pdf>). As part

1 of your answer to this subsection, explain in detail (i) how the Contura MLB may address “this
2 issue for certain patients”; and (ii) whether the method by which the Contura MLB “may address
3 this issue for certain patients,” as discussed above, is to use the Contura MLB with a balloon-to
4 skin distance of less than 5mm.

5 **RESPONSE TO INTERROGATORY NO. 3:**

6 SenoRx incorporates its General Objections as if fully set forth herein. SenoRx objects to
7 this interrogatory on the grounds that it is premature and conflicts with the parties’ stipulated
8 briefing schedule for response to Plaintiffs’ Motion for a Preliminary Injunction, as discussed in
9 the February 29, 2008 Case Management Conference and set forth in the parties’ proposed case
10 management order filed on March 4, 2008, and attempts to circumvent the parties’ agreed
11 schedule. SenoRx also objects that this Interrogatory is compound. SenoRx also objects that its
12 answer to this Interrogatory may incorporate information requested from Plaintiffs in discovery,
13 which information has not yet been produced. SenoRx also objects that this Interrogatory is
14 overly broad and unduly burdensome in that it seeks information not related to the preliminary
15 injunction. SenoRx further objects to this Interrogatory in that it prematurely seeks expert
16 testimony. SenoRx also objects to this Interrogatory on the grounds that it seeks information that
17 is protected by the attorney-client privilege, the work product doctrine, or any other applicable
18 privilege. As relates to the preliminary injunction, SenoRx will set forth its contentions and the
19 support therefore, as appropriate, in its Opposition to Plaintiffs’ Motion.

20 **INTERROGATORY NO. 4:**

21 Provide SenoRx’s construction of the following terms from claim 1 of the ’142 patent,
22 identify all references from the claims, specification or prosecution history that support that
23 construction, and identify of any extrinsic evidence upon which SenoRx intends to rely to
24 support the proposed construction, including, but not limited to, dictionary definitions, citations
25 to learned treatises and prior art, and testimony of percipient and expert witnesses.

- 26 a) “three-dimensional apparatus volume”;
27 b) “completely within”;
28 c) “disposed completely within the expandable outer surface”;

- d) "spaced apart";
- e) "located so as to be spaced apart from the apparatus volume";
- f) "asymmetrically located and arranged";
- g) "asymmetrically located and arranged within the expandable surface";
- h) "predetermined asymmetric isodose curves with respect to the apparatus volume".

RESPONSE TO INTERROGATORY NO. 4:

SenoRx incorporates its General Objections as if fully set forth herein. SenoRx objects to this interrogatory on the grounds that it is premature and conflicts with the parties' stipulated briefing schedule for response to Plaintiffs' Motion for a Preliminary Injunction, as discussed in the February 29, 2008 Case Management Conference and set forth in the parties' proposed case management order filed on March 4, 2008, and attempts to circumvent the parties' agreed schedule. SenoRx further objects to this Interrogatory as premature in light of the timetables provided in the Patent Local Rules. SenoRx also objects that this Interrogatory is compound. SenoRx further objects that this Interrogatory prematurely seeks expert testimony. SenoRx also objects to this Interrogatory on the grounds that it seeks information that is protected by the attorney-client privilege and the work product doctrine. SenoRx further states that its response to this Interrogatory necessarily is preliminary in light of Plaintiffs' unreasonable initial designation of Plaintiffs' own claim constructions as "Outside Attorneys Eyes Only" confidential material, and in view of Plaintiffs' refusal to construe "replaceably disposable."

Subject to, and without waiving the foregoing general and specific objections, SenoRx responds as follows:

Term or Phrase	SenoRx's Preliminary Construction	Support
"three-dimensional apparatus volume"	Plain meaning, i.e., the three-dimensional volume defined by the expandable outer surface of the apparatus.	Claim 1, Claims 2-14. Claim Construction Order (April 27, 2007).
"completely within"	Completely within the expandable	Claim 1, Claims 2-14. '142

1		outer surface of the apparatus, as distinguished from replaceably disposable within the expandable outer surface of the apparatus.	patent specification, including 5:5-11. '142 pros. history, including the October 21, 2001 office action and February 27, 2002 applicants' response and amendment replacing "replaceably disposable" with "completely within." Claim Construction Order (April 27, 2007).
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8	"disposed completely within the expandable outer surface"	Completely within the expandable outer surface of the apparatus, as distinguished from replaceably disposable within the expandable outer surface of the apparatus.	Claim 1, Claims 2-14. '142 patent specification, including 5:5-11. '142 pros. history, including the October 21, 2001 office action and February 27, 2002 applicants' response and amendment replacing "replaceably disposable" with "completely within." Claim Construction Order (April 27, 2007).
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15	"spaced apart"	Plain meaning, i.e., separated by a distance.	Claim 1, Claims 2-14. '142 patent specification, including 7:8-14; 7:49-55.
16			
17			
18	"located so as to be spaced apart from the apparatus volume"	Plain meaning, i.e., separated by a distance from the apparatus volume.	Claim 1, Claims 2-14. '142 patent specification, including 7:8-14; 7:49-55.
19			
20			
21	"asymmetrically located and arranged"	Plain meaning, i.e., located and arranged so that there is no symmetry.	Claim 1, Claims 2-14. '142 patent specification. '142 pros. history, including the October 21, 2001 office action and February 27, 2002 applicants' response and amendment.
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23			
24			
25	"asymmetrically located and arranged within the expandable surface"	Plain meaning, i.e., located and arranged within the expandable outer surface of the apparatus at some asymmetric location, e.g., off-center of the device.	Claim 1, Claims 2-14. '142 patent specification. '142 pros. history, including the October 21, 2001 office action and February 27, 2002 applicants' response
26			
27			
28			

		and amendment.
“predetermined asymmetric isodose curves with respect to the apparatus volume”	Plain meaning, i.e., predetermined isodose curves that are asymmetric with respect to the apparatus volume, e.g., predetermined isodose curves for which the center of symmetry does not match the center of symmetry of the apparatus volume.	Claim 1, Claims 2-14. '142 patent specification. '142 pros. history, including the October 21, 2001 office action and February 27, 2002 applicants' response and amendment. Claim Construction Order (April 27, 2007).

11 Dated: March 14, 2008

12 By: 

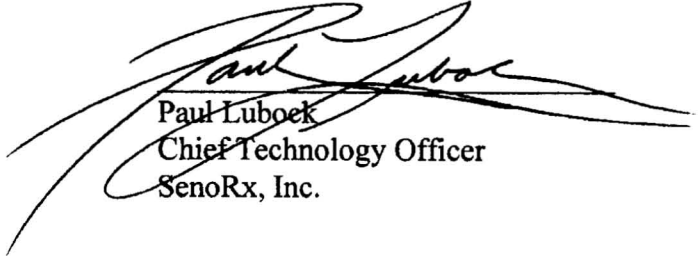
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Attorneys for Defendant and Counterclaimant
 SENORX, INC.

VERIFICATION

I, Paul Lubock, hereby declare and say under penalty of perjury that I am the Chief Technology Officer of SenoRx, Inc.; that I have read the foregoing Objections and Responses to Plaintiffs' First Set of Interrogatories, and I know the contents thereof; that said answers were prepared with the assistance and advice of counsel and may reflect legal positions for which factual verification is not necessary; that the factual answers set forth herein, subject to inadvertent or undiscovered errors, are based upon the recollection and representations of others, and therefore necessarily are limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparing these answers; that I therefore reserve the right to make any change in the answers if it appears at any time that omissions or errors have been made therein; and that subject to the limitations set forth herein the said answers are true and accurate to the best of my knowledge, information, and belief after reasonable inquiry, although I may not have first-hand knowledge of some of the matters addressed.


Paul Lubock
Chief Technology Officer
SenoRx, Inc.

CERTIFICATE OF SERVICE
U.S. District Court, Northern District of California,
Hologic, Inc. et al. v. SenoRx, Inc.
Case No. C-08-0133 RMW

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On March 14, 2008, I served a copy(ies) of the following document(s):

**DEFENDANT AND COUNTERCLAIMANT SENORX, INC.'S OBJECTIONS AND
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES (NOS. 1-4)**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
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☒ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☒ (BY ELECTRONIC MAIL) I caused such document(s) to be sent via electronic mail (email) to the above listed names and email addresses.

☐ (BY PERSONAL SERVICE) I caused to be delivered by hand to the addressee(s) noted above. I delivered to an authorized courier or driver to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business,

1 correspondence for overnight delivery is deposited with delivery fees paid or provided for
2 at the carrier's express service offices for next-day delivery the same day as the
correspondence is placed for collection.

3 ☐ (BY FACSIMILE) I caused to be transmitted by facsimile machine (number of sending
4 facsimile machine is (858) 350-2399 at the time stated on the attached transmission
report(s) by sending the documents(s) to (see above). The facsimile transmission(s)
was/were reported as complete and without error.

5 ☐ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case
6 Management/Electronic Case File system with the U.S. District Court for the Northern
District of California.

7 I declare under penalty of perjury under the laws of the United States that the above is true
8 and correct, and that this declaration was executed on March 14, 2008.

9 

10

Kirsten Blue